



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 235

Docket No. DOT-OST-2010-0211

RIN No. 2105-AE07

Reports by Air Carriers on Incidents Involving Animals During Air Transport

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM)

SUMMARY: The Department is proposing to amend its existing rule regarding the reporting of incidents involving animals during air transport, 14 CFR 234.13, to expand the reporting requirement to U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats, to expand the definition of “animal” to include all cats and dogs transported by the carrier, regardless of whether the cat or dog is transported as a pet by its owner or as part of a commercial shipment (e.g., shipped by a breeder), and to require all covered carriers to provide in their December reports the total number of animals that were lost, injured, or died during air transport. We also seek comment on requiring carriers to report the total number of animals transported in the calendar year in the December reports.

DATES: Comments should be filed by [insert date that is sixty (60) days after publication in the *Federal Register*.] Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2010-0211 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2010-0211 or Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (65 *FR* 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Vinh Q. Nguyen, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590, 202-366-9342 (phone), 202-

366-7152 (fax), vinh.nguyen@dot.gov. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), blane.workie@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The current rule regarding reporting of incidents involving animals during air transport derives from the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century or “AIR-21” (Pub. L. 106-181), which was signed into law on April 5, 2000. It included section 710, “Reports by Carriers on Incidents Involving Animals During Air Transport,” and was codified as 49 U.S.C. § 41721. Section 41721 contains the following provisions:

(a) IN GENERAL.--An air carrier that provides scheduled passenger air transportation shall submit monthly to the Secretary a report on any incidents involving the loss, injury, or death of an animal (as defined by the Secretary of Transportation) during air transport provided by the air carrier. The report shall be in such form and contain such information as the Secretary determines appropriate.

* * * *

(d) PUBLICATION OF DATA.--The Secretary shall publish data on incidents and complaints involving the loss, injury, or death of an animal during air transport in a manner comparable to other consumer complaint and incident data.

(e) AIR TRANSPORT.--For purposes of this section, the air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from

check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal.

On August 11, 2003, DOT, through its Federal Aviation Administration (FAA), issued a final rule implementing section 710 of AIR–21. *See* 68 FR 47798. The rule required air carriers that provide scheduled passenger air transportation to submit a report to the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) on any incident involving the loss, injury, or death of an animal during air transportation provided by the air carrier. Under the rule, the reports would then be shared with DOT, which would publish the data, as required by AIR–21, in a format similar to the manner in which it publishes data on consumer complaints and other incidents. However, issues arose regarding whether APHIS had the capability to accept such information directly from the carriers and pass it on to DOT. In order to resolve any such issues, on February 14, 2005, DOT made a technical change in the rule to require reporting airlines to submit the required information directly to DOT’s Aviation Consumer Protection Division (ACPD) rather than APHIS and to make the rule part of DOT’s economic regulations. *See* 70 FR 7392. The rule is codified at 14 CFR 234.13.

Section 234.13 requires air carriers that provide scheduled passenger air transportation to submit a report to the ACPD on any incidents involving the loss, injury, or death of an animal during air transportation within 15 days of the end of the month during which the incident occurred. It defines “animal” as any warm- or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States. The air transport of an animal covers the entire period during which an animal is in the custody of an air carrier, from check-in or delivery of the animal to the carrier prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal. Section

234.13 also lists the information that is to be included in each report (e.g., carrier and flight number, date and time of the incident). However, because section 234.13 is contained in Part 234 of Title 14 and that part applies only to the domestic scheduled passenger flights of carriers that account for at least 1 percent of domestic scheduled passenger revenue (“reporting carriers”), there has been confusion regarding which entities are required to submit a report to the ACPD on incidents involving loss, injury, or death on an animal during air transportation as well as which flights are covered (i.e., only domestic scheduled passenger flights, or all scheduled passenger flights, including international flights).

On August 10, 2010, Senators Richard Durbin, Robert Menendez, and Joseph Lieberman wrote to the Secretary of Transportation urging the Department to amend the rule so that airlines would be required to report all incidents involving the loss, injury, or death of cats and dogs that occur while they are traveling in an airline’s care, custody, or control, regardless of whether the cat or dog is being transported as a pet by its owner or as part of a commercial shipment. In addition to the letter, the Department received a petition for rulemaking on this matter from the Animal Legal Defense Fund (ALDF), an advocacy group which works to protect the lives and advance the interest of animals through the legal system. In its petition, ALDF requests that the Department’s regulation requiring the reporting of loss, injury, or death of animals in air transport be revised to require airlines to report any such incident involving animals they carry. It contends that the data that are currently collected by the Department capture only incidents affecting pets, even though pets make up only part of the total number of animals transported by airlines. The ALDF’s proposal would apply to all species of animals, not just cats and dogs.

Notice of Proposed Rulemaking

This NPRM proposes to expand the applicability of the rule to require all U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 passenger seats to submit a report to the ACPD on any incidents involving the loss, injury, or death of an animal during air transportation within 15 days after the end of the month during which the incident occurred. Under the current rule, most of the reports on incidents involving animals during air transport have been submitted by “reporting carriers,” as defined in 14 CFR 234.2. At the present time, there are 15 “reporting carriers.” These airlines account for the vast majority of domestic traffic. Nevertheless, we believe that it is important to expand the requirement to all carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats to provide consumers and other interested parties a more complete picture of the treatment of animals on scheduled passenger flights. By expanding the applicability from the reporting carriers (i.e., U.S. carriers that account for at least 1 percent of domestic scheduled passenger revenue) to U.S. carriers that operate domestic or international scheduled passenger service with at least one aircraft with more than 60 seats, we would be requiring reports of loss, injury or death of an animal from 36 carriers instead of only 15 carriers. These 36 carriers carry about 99.6 percent of domestic passengers and 98 percent of international passengers that travel on U.S. airlines.

Consistent with section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), we are not proposing to expand this rule to carriers that operate scheduled service with only aircraft that have a design capacity of 60 seats or less as these carriers are considered small

businesses.¹ We invite comment on whether there is any benefit to expanding the applicability of the rule any further to encompass more U.S. carriers. We are not considering expanding the requirement to report on the loss, injury or death of animals to foreign air carriers that operate flights to and from the U.S. or to charter flights, as Congress mandated the reporting of such information only by U.S.-flag airlines that operate scheduled passenger service. However, we are aware of an indirect cargo air carrier operating under the provisions of Part 296 of the Department's regulations that specializes in providing air transportation only to pets. We seek comment on whether the reporting requirements should apply to such entities.

The existing rule defines an animal as a pet in a family household. The NPRM proposes to expand this definition to include cats and dogs that are part of a commercial shipment. More specifically, the NPRM proposes to retain that portion of the definition of "animal" that refers to any warm- or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States and add to this definition "and any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight."

We are proposing this expansion in the definition of an animal because dogs and cats that are being shipped on scheduled passenger flights other than as pets by their owners are likely being transported for the purpose of being sold as a pet in a family household in the United States. Moreover, based on the data we collected of loss, injury or death of household pets transported in commercial aviation from May 2005 to November 2011, we found that virtually all of the reports of deaths (95%), injuries (100%), and loss (98%) involved cats and dogs.

¹ DOT defines small carriers based on the standard published in 14 CFR 399.73: "For the purposes of the Department's implementation of chapter 6 of title 5, United State Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft as defined in §298.3 of this chapter (up to 60 seats/18,000 pound payload capacity)."

Nevertheless, we seek comment on whether the definition of an animal should be expanded further to include not only dogs and cats in commercial shipments but all species of animals in commercial air transportation. We are seeking comment, rather than proposing specific language, on expanding the definition of an animal to apply to all species of animals, as suggested by the Animal Legal Defense Fund. We are not proposing language at this time for two reasons. First, the overwhelming majority of losses, injuries, and deaths of household pets reported to DOT by airlines have involved cats and dogs. Second, the legislative history of AIR-21 does not appear to show an intent to require reporting of incidents involving commercial shipment of animals such as fish and birds that are being shipped from breeders/wholesalers to retailers. The rule would continue not to cover animals that accompany a passenger at his or her seat in the cabin as the air carrier does not take custody of such animals. In any event, the likelihood of the loss, injury, or death of such animals is very minimal.

We further propose in this NPRM to require each covered carrier to provide in its December report a summary of the total number of animal losses, injuries, and deaths and the total number of animals transported for the calendar year. Thus, each covered carrier would be required to file a report for the month of December even if the carrier did not experience any incidents involving animals and/or carried no animals during that month or even that year. We seek comment on requiring carriers to report the total number of animals transported during that year. We believe the additional requirement of reporting the number of animals transported may be important for providing a complete picture of a covered carrier's animal transport record, as the number of animals transported by each airline may vary widely. If we were to gather this data from the airlines, we would use it to calculate rates of animal loss, injury and death per unit of animals transported for each airline (e.g., 1.04 deaths per 10,000 animals transported) and

include this information in our published animal incident reports. Without this information, consumers and others will not be able to compare the rate of animal incidents from one carrier to another or one year to another.

We ask commenters to provide the following information to assist our consideration of the question of requiring carriers to report the total number of animals transported. How many cats, dogs and other household pets are currently transported per year on scheduled flights of U.S. air carriers? Has this number been increasing or decreasing in recent years? Are current procedures for tracking animal incidents adequate for tracking the total number of animals transported? If yes, then what additional annual costs would be involved for tracking the total number of animals transported? If not, what new procedures would need to be put in place? What exactly would be involved? In terms of costs: what are the set-up costs for such a system? What are annual costs of running it? Are the annual costs fixed or do they depend on the number of animals transported? Please describe capital costs, labor hours, and other costs separately.

In order to limit the burden on the covered carriers, we seek comment on whether we should require covered carriers to report only once per year in the December reports on the total number of animals transported during the previous year, or whether the total number of animals transported should be reported each month. We also solicit comment on whether carriers should be required to file negative reports even if the carrier did not have any incidents involving the loss, injury, or death of an animal during a particular month or year — i.e., reporting “0” for any reporting category where there were no such incidents. Negative reports would require carriers to affirmatively certify that there were no reportable animal incidents during that period; they are an additional incentive to ensure that the reports are complete and accurate. We also invite interested persons to comment on whether the Department should continue not requiring carriers

to file negative monthly reports of animal incidents (i.e., not requiring reports stating there were no incidents of death, loss, or injury of an animal).

The Department is seeking comment on these issues. Our final action will be based on the comments and supporting evidence filed in this docket and on our own analysis.

REGULATORY ANALYSES AND NOTICES

A. Executive Order 13563 and 12866 and DOT Regulatory Policies and Procedures

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This action has been determined not to be significant under Executive Order 12866 and DOT's Regulatory Policies and Procedures and was not reviewed by the Office of Management and Budget (OMB). The costs associated with this rule would be minimal.

1. Cost of Monthly Reports Other than December Report

The cost of filing monthly reports would be minimal. Aside from the December report, a carrier would be required to report only during the months where the carrier experiences a reportable animal incident. Currently, 15 of the 36 carriers that would be affected are already required to collect information on incidents involving the loss, injury, or death of an animal. For these 15 carriers, who account for approximately 90 percent of the domestic market, there would be no additional costs. For the 21 other carriers who do not currently have to report, the cost would vary depending on whether or not there is a reportable incident during any given month.

For example, if a carrier experiences no reportable incidents all year, then the recurrent cost of filing monthly reports for January to November is \$0. However, if the carrier experiences a reportable incident every month of the year, the cost would be \$401.52. This is based on our estimate that it would take a Paralegal working in scheduled air transportation making \$33.46 (the average wage rate plus benefits) one hour to prepare and submit one monthly report. So, if all 21 carriers, who do not currently have to report, each experience a reportable incident every month of the year, the total cost would be \$8,431.92. Therefore, the cost of monthly reports would be between \$0 and \$8,431.92 per year depending on the number of reportable incidents. Even the high estimate would still be a minimal cost.

2. Cost of the December Report

All covered carriers would be required to submit a December report. However, the burden on covered carriers to submit a December report that includes the total number of animals that were lost, injured, or died during air transport would be minimal. This report would merely be an arithmetic total of the values in any report that a covered carrier filed throughout the year.

3. Cost of Expanded Definition of an Animal

The cost of the proposed expanded definition of an animal would impact airlines, but the cost would still be minimal. Since 2006, the average number of reported incidents per year is 46. If we were to assume that it takes a Paralegal one hour to prepare and submit a report per incident, then we have estimated that the cost to the industry is \$1540 per year. This is based on our estimate of a Paralegal's salary discussed above. Various trade sources indicate that dogs and cats transported as part of a commercial shipment may account for as much as half of all dogs, cats, and other household pets that are transported by covered carriers. If we were to assume that expanding the definition to include dogs and cats transported as part of a commercial

shipment would result in an additional 46 reported incidents per year (i.e., a total of 92 incidents), the additional cost of \$1540 is still minimal.

The benefits of the rule, while difficult to quantify, exceed the costs. Good data are not immediately available as to the total number of animals that air carriers currently transport. Neither trade associations for animal transportation providers nor airlines collect data on the number of animals transported annually by air. Trade association (e.g., pet transportation firms) and industry (airlines) sources estimate the actual number of pets that carriers transport annually at up to 800,000. This proposal would provide consumers with a fuller picture of the safety record of airlines in the transportation of animals. If the benefit of expanding reporting requirements to dogs and cats transported as a commercial shipment were as little as a cent per animal shipped, the benefits of the rule would exceed the costs.

A copy of the preliminary regulatory evaluation has been placed in the docket. We invite comment on the quantification of costs and benefits for this proposed requirement, as well as the methodology used to develop our cost and benefit estimates. We also seek comment on how unquantified costs and benefits could be measured.

B. *Regulatory Flexibility Act*

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), I certify that this rulemaking would not have a significant economic impact on a substantial number of small entities. The NPRM would impose no new duties or obligations on small entities. As discussed above, consistent with the RFA, as amended by the SBREFA, we are not proposing to expand this rule to carriers that operate scheduled service with only aircraft that have a design capacity of 60 seats or less as these carriers are considered small businesses.

C. *Executive Order 13132 (Federalism)*

This action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. *Executive Order 13084*

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because the provision on which we are seeking comment would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 49 U.S.C. 3501 et seq.), the Department is seeking to renew with change the information collection titled “Reports by Carriers on Incidents Involving Animals During Air Transport” (OMB No. 2105-055). This information collection expired on June 6, 2011. This NPRM proposes to modify the information collection requirement. Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the Federal Register providing notice of the proposed collection of information and a 60-day comment period, and must otherwise consult with members of the public and affected agencies concerning the proposed collection.

The collection of information proposed in the NPRM is a requirement that U.S. carriers that operate scheduled passenger service with at least one aircraft having a designed seating capacity of more than 60 passenger seats report to the Department's ACPD any incidents involving the loss, injury, or death during air transport of cats and dogs that were part of a commercial shipment. (Cats and dogs that were being kept as a household pet at the time of such a loss, injury, or death are already required to be reported by these airlines.) As discussed above, this requirement would expand the reporting requirement from 15 carriers to 36 carriers, an increase of 21 carriers. We also propose to require covered carriers to state in their report for the month of December the total number of animals that were lost, injured, or died during air transport. We solicit comment on whether we should also require carriers to provide information about the total number of animals transported in the calendar year.

Title: Reports by Carriers on Incidents Involving Animals During Air Transport.

OMB Control Number: 2105-0552

Type of Request: Modification of expired Information Collection Request

Respondents: U.S. carriers that operate scheduled passenger service with at least one aircraft having a designed seating capacity of more than 60 seats (36).

Frequency: For each respondent, one information set for the month of December, plus one information set during some months (1 to 12)

Estimated Annual Burden on Respondents: 36 to 432 hours (Respondents [36] × Frequency [1 to 12 per year]).

Comments are invited on: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without

reducing the quality of the collected information. Comments submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of these information collections.

F. *Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

ISSUED THIS 22__ DAY OF _June_____, 2012, IN WASHINGTON, D.C.

Robert S. Rivkin
General Counsel

List of Subjects in Parts 234 and 235

Air Carrier, Animal Incidents, Consumer Protection, Reporting and Recordkeeping
Requirements

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR chapter II as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and Sections 41708 and 41709.

2. Section 234.13 is removed.

§ 234.13 [Removed]

- 3.. A new part 235 is added to read as follows:

**PART 235—REPORTS BY AIR CARRIERS ON INCIDENTS INVOLVING ANIMALS
DURING AIR TRANSPORT**

Sec.

235.1 Definitions

235.2 Applicability

235.3 Reports by air carriers on incidents involving animals during air transport

Authority: 49 U.S.C. § 41721

§ 235.1 Definitions

For the purposes of this part:

Air transport includes the entire period during which an animal is in the custody of an air carrier, from the time that the animal is tendered to the air carrier prior to departure until the air carrier tenders the animal to the owner, guardian or representative of the shipper of the animal at the animal's final destination. It does not include animals that accompany a passenger at his or her seat in the cabin and of which the air carrier does not take custody.

Animal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States and any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight, including shipments by trainers and breeders.

§ 235.2 Applicability

This part applies to the scheduled domestic and international passenger service of any U.S. air carrier that operates such service with at least one aircraft having a designed seating capacity of more than 60 passenger seats.

§ 235.3 Reports by air carriers on incidents involving animals during air transport.

(a) Each covered carrier shall, within 15 days after the end of the month to which the information applies, submit to the United States Department of Transportation's Aviation Consumer Protection Division a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier, including incidents on flights by that carrier that are operated with aircraft having 60 or fewer seats. The report shall be made in the form and manner set forth in reporting directives issued by the Deputy General Counsel for the U.S. Department of Transportation and shall contain the following information:

- (1) Carrier and flight number;
- (2) Date and time of the incident;
- (3) Description of the animal, including name, if applicable;
- (4) Name and contact information of the owner(s), guardian and/or shipper of the animal;
- (5) Narrative description of the incident;
- (6) Narrative description of the cause of the incident;
- (7) Narrative description of any corrective action taken in response to the incident;
- and
- (8) Name, title, address, and telephone number of the individual filing the report on behalf of the air carrier.

(b) Within 15 days after the end of December of each year, each covered carrier shall submit the following information (this information may be included in any report that the carrier may file for the loss, injury, or death of animals during the month of December):

- (1) The total number of incidents involving an animal during air transport provided by the air carrier for the entire calendar year, including incidents on flights by that carrier that are operated with aircraft having 60 or fewer seats. The report shall include subtotals for loss, injury, and death of animals. Report “0” for any category for which there were no such incidents. If the carrier had no reportable incidents for that calendar year, it shall report “0” in each category.
- (2) The December report must contain the following certification signed by your authorized representative: “I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 235. I affirm that, to the best of my knowledge and belief, this is a true, correct and complete report.”

[FR Doc. 2012-16024 Filed 06/28/2012 at 8:45 am; Publication Date: 06/29/2012]